STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 26, 2012
v	No. 304384 Berrien Circuit Court
ANTONIO LEE LUCAS, Defendant-Appellant.	LC No. 2009-003563-FH

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant Antonio Lee Lucas appeals by leave granted his conviction for larceny from a person, MCL 750.357. We affirm.

The police arrested defendant on August 1, 2009. The prosecution charged defendant with various offenses in multiple separate cases, including a September 12, 2008, robbery that is the underlying offense of the present case. On February 12, 2010, the trial court sentenced defendant in two unrelated cases[1] to time in prison for offenses distinct from his alleged robbery. On February 24, 2010, in exchange for the dismissal of other counts in this case as well as other cases pending against him[2], defendant pleaded no contest to larceny from a person in this case. Defendant subsequently moved to withdraw his plea, and the trial court denied his motion. On June 15, 2010, the trial court sentenced defendant to 48 to 120 months' imprisonment, with credit for 99 days served.

Defendant first argues that the trial court abused its discretion by denying his motion to withdraw his no-contest plea. We disagree. "This Court . . . reviews for an abuse of discretion a trial court's denial of a defendant's motion to withdraw a plea. An abuse of discretion occurs

[1] Lower court docket nos. 2008-405019 (third-degree fleeing and eluding a police officer) and 2008-405020 (resisting and obstructing a police officer).

[2] Under the plea agreement, defendant agreed to plead no contest to larceny from a person in exchange for the dismissal of the following: count I, first-degree home invasion; count II, unarmed robbery; count III, a supplement as an habitual offender; docket no. 2008-406079-FH (sex offender registry); and docket no. 2008-404982-FH (resisting and obstructing).

when the decision results in an outcome falling outside the range of principled outcomes." *People v Fonville*, 291 Mich App 363, 376; 804 NW2d 878 (2011) (citations omitted).

A defendant does not have an absolute right to withdraw his no-contest plea after the trial court has accepted it. See *People v Patmore*, 264 Mich App 139, 149; 693 NW2d 385 (2004). MCR 6.310(B) controls and provides the circumstances under which a defendant may withdraw his plea before sentencing. *Id.* MCR 6.310(B)(1) provides:

> [A] plea may be withdrawn on the defendant's motion or with the defendant's consent only in the interest of justice, and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by subrule (C).

Under MCR 6.310(B)(1), in order "[t]o support withdrawal of a plea in the interest of justice . . . defendant has the burden of establishing a fair and just reason for withdrawal of the plea." *Patmore*, 264 Mich App at 149 (quotations and citation omitted).

At the hearing on defendant's motion to withdraw his plea, defendant stated that the trial court should permit him to withdraw his no-contest plea because he was innocent and did not understand the meaning of a no-contest plea. "The court may not accept a plea of . . . nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate." MCR 6.302(A). At defendant's plea hearing, the trial court complied with all the procedural requirements under MCR 6.302. In particular, defendant testified under oath at the plea hearing that he understood that his no-contest plea constituted a conviction of larceny from a person. At no point has defendant offered evidence to support his contention that he did not understand his no-contest plea. Accordingly, defendant has not met his burden of establishing that withdrawing his plea was in the interest of justice. See *People v Thew*, 201 Mich App 78, 95; 506 NW2d 547 (1993) ("[A] defendant must bring forth evidence that it is in the interest of justice to withdraw the plea . . . .").

Defendant similarly fails to establish that withdrawal was in the interest of justice on the basis of his claim of innocence. See *id.* At the plea hearing, the trial court found a sufficient factual basis to support defendant's plea. Although defendant made a cursory assertion of his innocence at the hearing to withdraw his plea, the defense never presented any evidence to support defendant's assertion of innocence. To the contrary, there was evidence to support defendant's guilt, including the victim's testimony at the preliminary examination. Accordingly, we conclude that the trial court did not abuse its discretion by determining that defendant failed to establish that withdrawal was in the interest of justice. See *People v Haynes (After Remand)*, 221 Mich App 551, 569; 562 NW2d 241 (1997) (withdrawal is inappropriate where a factual basis is established for the plea at the time he entered the plea and the defendant's "claim of 'innocence' is not supported by a review of the entire record").

Moreover, we find that the circumstances of this case indicate that defendant's motivation to withdraw his plea was a concern regarding his recommended sentence in the presentence investigation report (PSIR). The record indicates that defendant reviewed the PSIR

after pleading no contest and subsequently moved to withdraw his plea. Before the hearing on his motion to withdraw his plea, defendant wrote the trial court a letter in which he stated, "I . . . feel that [] the prosecutor attorney has set my guide lines too high." Accordingly, this is further support for the trial court's denial of defendant's motion to withdraw his plea. See *id*. at 559 ("[R]equests to withdraw pleas are generally regarded as frivolous where the circumstances indicate that the defendant's true motivation for moving to withdraw is a concern regarding sentencing."); see also *Fonville*, 291 Mich App at 378.

Defendant next argues that the trial court erred in calculating his sentencing credit. We disagree. "The question whether defendant is entitled to sentence credit pursuant to MCL 769.11b for time served in jail before sentencing is an issue of law that we review de novo." *People v Waclawski*, 286 Mich App 634, 688; 780 NW2d 321 (2009). Whether a defendant is entitled to sentencing credit is governed by MCL 769.11b, which provides:

> Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.

Under the plain language of MCL 769.11b, "[o]ne who serves time in jail before sentencing for denial of bond or inability to post bond is entitled to receive credit for that time served in jail before sentencing." *People v Seiders*, 262 Mich App 702, 705-706; 686 NW2d 821 (2004). However, "[a] defendant is only entitled to sentence credit for time served as a result of being denied or unable to furnish bond for the offense of which he is convicted." *People v Patton*, 285 Mich App 229, 238; 775 NW2d 610 (2009). In this case, the trial court credited defendant for the time he served until his February 12, 2010, prison sentences were imposed in the unrelated lower-court docket nos. 2008-405019 and 2008-405020.[3] The trial court correctly reasoned that defendant was not entitled to credit for time served after February 12, 2010, because he was no longer incarcerated as a result of being denied or unable to furnish bond for the offense of larceny from a person; rather, he was incarcerated for other offenses. See *id*. at 239 (finding that the defendant was not entitled to credit toward his embezzlement sentence where his incarceration was not the result of his being denied or unable to furnish bond for the embezzlement charge but, instead, was time served for his bank-robbery conviction); *People v Givans*, 227 Mich App 113, 125-126; 575 NW2d 84 (1997) (holding that the defendant "was not entitled to credit for the latter period [of his incarceration] because he was incarcerated for another offense during that time").

Defendant attempts to distinguish the present case from the foregoing authority by arguing that the present case was a companion case to those for which the trial court sentenced

[3] The 99-day credit was calculated using the time period between November 6, 2009, the date defendant's parole expired from a prior case unrelated to those discussed here, and February 12, 2010, the date defendant was sentenced in lower-court docket nos. 2008-405019 and 2008-405020.

him on February 12, 2010, and, thus, his February 12 sentences should not cut short his credit towards his larceny sentence. However, defendant abandoned this argument by failing to cite supporting authority. See *People v Russell*, 266 Mich App 307, 316; 703 NW2d 107 (2005) (holding that an issue is abandoned where defendant "fails to cite specific supporting authority on appeal"). Regardless, on the facts of this case, we find this argument to be without merit. The present case arises from defendant's September 12, 2008, robbery. Docket numbers 2008-405019 and 2008-405020 stem from defendant's resisting and obstructing and fleeing and eluding a police officer on September 19, 2008. The present case, thus, involves a distinct charge and a different time frame than the cases involving defendant's fleeing and evasion.

Defendant also contends that the trial court's denial of sentencing credit improperly rendered his sentence consecutive. Defendant has abandoned this issue as well because he has given only cursory treatment to this argument in his brief. See *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004). Nevertheless, we conclude that this argument also lacks merit. "Consecutive sentences may be imposed only when specifically authorized by statute." *People v Stead*, 270 Mich App 550, 551; 716 NW2d 324 (2006); see also *Givans*, 227 Mich App at 126 ("Under the concurrent sentence rule, one sentence may not be ordered to begin at the completion of another sentence unless statutory authority provides otherwise."). However, we have held that the concurrent-sentence rule is not implicated where the trial court did not delay sentencing in the given case until the completion of the sentencing in the defendant's other case. *Givans*, 227 Mich App at 126. Here, the trial court did not delay defendant's sentencing for larceny until it had completed his February 12, 2010, sentencing; defendant did not even plead no contest in the present case until February 24, 2010. Thus, the trial court's decision not to give defendant credit for time served after February 12, 2010, did not improperly impose a consecutive sentence. See *id.*

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Amy Ronayne Krause